

DATE: December 8, 1994
CASE NO. 93-RIS-37

IN THE MATTER OF

UNITED STATES DEPARTMENT OF LABOR
Pension and Welfare Benefits
Administration,

Complainant

v.

MIDLANTIC COAST DELIVERY
SYSTEMS, INC.,

Respondent.

Appearances:

Wayne R. Berry, Esq.
For Complainant

Herschel Frankel, Esq.
For the Respondent

Before: PAUL H. TEITLER
Administrative Law Judge

DECISION AND ORDER
APPROVING SETTLEMENT

On December 1, 1994, the parties reached a settlement pursuant to 29 CFR 2570.65(c)(2). Complainant Pension and Welfare Benefits Administration notified the Court that the parties have agreed to a settlement. A Consent Order signed by the Complainant and all counsel (designated as Joint Exhibit 1) has been presented to the undersigned. The parties have requested that the settlement be approved as follows:

Complainant, United States Department of Labor, Pension and Welfare Benefits Administration (PWBA) and Respondent, Midlantic Coast Delivery Systems, Inc. (Midlantic) have negotiated an agreement to settle all claims and issues between them in this

matter, and each consents to the entry of this Consent Order by the Court as the sole and complete memorialization of the terms of such agreement.¹

1. Midlantic, the administrator of the Midlantic Coast Delivery Systems, Inc. Profit Sharing Plan (the "Plan"), has attained compliance with the reporting provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1001, et seq.; specifically ERISA section 101(b)(4) and 104(a)(1)(A), 29 U.S.C. §§1021(b)(4) and 1024 (a)(1)(A), and the regulations at 29 C.F.R. §§2520.103-1 and 2520.104a-5 issued thereunder, pertaining to the filing of an annual report containing a report of an independent qualified public accountant as required by and described in ERISA sections 103(a)(1)(B) and 103(a)(3)(A), 29 U.S.C. §§1023(a)(1)(B) and 1023(a)(3)(A), and the regulation at 29 C.F.R. §2520.103-1(b)(5) issued thereunder.

2. The parties hereby agree that the present Consent Order represents a full, final and complete settlement of all claims that the complainant, PWBA, may have regarding reporting deficiencies in connection with the Plan's 1989 annual report, and that the above-captioned proceeding shall be, and hereby is, dismissed with prejudice.

3. The parties further agree that:

(a) this Consent Order shall have the same force and effect as an order made after a full hearing;

(b) the entire record on which this Consent Order is based shall consist solely of the Notice and the parties' agreement as reflected in this Order;

(c) the parties waive any further procedural steps before this Court;

(d) the parties waive any right to challenge or contest the validity of this Consent Order and the decision of this Court entered into in accordance with the parties' agreement reflected herein; and

(e) this Consent order and the decision of this Court shall constitute a final agency action.

¹ This settlement is based upon representations by the Respondent, its agents, representatives, and/or creditors regarding the financial condition of the Respondent. If the Complainant subsequently determines that these representations were inaccurate, Complainant shall be entitled to petition this Court for such further relief as the Court deems appropriate.

4. The signers of the Consent Order acknowledge and represent that they are counsel of record for the parties and are authorized and empowered to execute this Consent Order on behalf of their respective clients.

The parties, by their representatives consent to the entry of this Consent Order.

I have carefully considered the facts involved in this case and the difficult legal and factual questions in dispute, as well as the criteria set forth in 29 CFR 2570.65(c)(2) and, upon careful evaluation of same, I conclude that the settlement is fair and in the best interest of the Complainant. Moreover, I find that the settlement was arrived at without duress, and only after full exploration by the parties of all issues in dispute and the difficult legal and factual questions involved. Pursuant to 29 CFR 2570.65(c)(2), I find that the settlement is fair, reasonable and adequate.

ORDER

IT IS ORDERED THAT the settlement be, and hereby is **APPROVED**.

PAUL H. TEITLER
Administrative Law Judge

PHT:abr

